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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1935.

No. 428

IN THE MATTER OF
GRANADA HOTEL CORPORATION,

Debtor.

C. S. TUTTLE, ALBERT J. PETERSON, LEWIS W. RIDDLE, W. G. STURM, AND E. A. KILMER, AS MEMBERS OF A COMMITTEE CONSTITUTED UNDER THE TERMS OF THE DEPOSIT AGREEMENT DATED APRIL 28, 1933, ETC.,

Petitioners,

vs.

SAM HARRIS, J. ROSE AND I. GORDON, PETITIONING CREDITORS,

Respondents.

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI.

Counsel for Petitioners:
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THE GUNTHORP-WARREN PRINTING COMPANY, 330 WEST JACKSON, CHICAGO

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Respondents.

To the Honorable the Justices of the Supreme Court of the United States:

And now come C. S. Tuttle, Albert, J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, as Members of a Committee constituted under the terms of the Deposit Agreement dated April 28, 1933, for the protection of holders of first mortgage bonds of Granada Hotel Corporation, and respectfully petition that this court issue the Writ of Certiorari for review of the decision of the United States Circuit Court of Appeals in and for the Seventh Circuit, in the above entitled cause, and in support of their petition respectfully show unto your Honors as follows:

STATEMENT OF MATTER INVOLVED.

Three creditors filed an involuntary petition in the District Court of the United States for the Northern District of Illinois, against the Granada Hotel Corporation to bring about a reorganization under Section 77B of the Bankruptcy Act. The jurisdictional allegation was that a receiver of the assets and property of the debtor had been named by the Superior Court of Cook County, Illinois, and that said proceedings were still pending in said Superior Court. (R. 5, Paragraph VIII). Acts of Bankruptcy, the alternate jurisdictional requirements for Section 77B of the Bankruptcy Act, were not alleged.

Petitioners appeared specially, and, *inter alia,* showed to the court that prior to the filing of the petition in the District Court the receiver in the State Court action (simple mortgage foreclosure) had been discharged (R. 13-16-18-41); that while the foreclosure suit itself was still pending, City National Bank and Trust Company, Successor Trustee under the mortgage indenture, had taken possession of the property under its contract right as determined by the laws of Illinois, and was in possession of said property after condition broken under the terms of its trust deed (R. 15-18); that hence there was no prior pending equity receivership as alleged in the petition, and that hence jurisdiction did not exist in the District Court upon the petition there on file.

The contention was rejected. The trial Court's views appear from the Colloquy (R. 45-54) and the memorandum opinion (R. 54-56).

An appeal was duly taken to the Seventh Circuit Court of Appeals and the District Court's order upholding its jurisdiction was there affirmed. That Court filed a short *per curiam* opinion which appears on Page 82 of the Record. Thereafter petitions for rehearing were filed and on July 26, 1935, denied. (R. 92).

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The question involved is jurisdictional. The portions of Section 77B of the National Bankruptcy Act, as amended, and that are material, are Sub-sections (a) and (i). The principal requirement is that in an involuntary proceeding either acts of bankruptcy must have been committed within four months or else "a prior proceeding in bankruptcy or equity receivership is * * * pending." The United States Circuit Court of Appeals for the Seventh Circuit has held in the case at bar that the appointment of a receiver in a foreclosure proceeding against a single piece of real estate owned by a corporation constitutes a "pending equity receivership" and is sufficient ground under the statute for the institution of bankruptcy proceedings for the entire property of such corporation. Whereas, on the other hand the United States Circuit Court of Appeals in and for the Second Circuit has on the same identical question held precisely the contrary, namely, that a mortgage foreclosure with appointment of a receiver is not a "pending equity receivership" within the intent and purview of the Act. The decisions of the United States Circuit Court of Appeals for the Second Circuit were delivered in the following cases: *In re 2168 Broadway Corporation,* July 15, 1935, C. C. H. Par. 3546; *In re Allen,* July 15, 1935, C. C. H. Par. 3547; and *In re Broadway-Barclay Corporation,* same as *Allen* case.

Various District courts have expressed contrary views. Those holding in line with the decisions of the Seventh Circuit Court of Appeals are as follows: *In re Granada Hotel Corporation,* 9 Fed. Supp. 909; *In re Surf Building Corporation,* C. C. H. Par. 3076; *In re Flamingo Hotel,* C. C. H. Par. 3007, all by Judge Lindley in the Northern

District of Illinois, and *In re Broadway-Barclay Corporation,* Southern District of N. Y., with no opinion (reversed by C. C. A.)

Those holding in line with the Second Circuit Court of Appeals are as follows: *In re Laclede Gas Light Company,* C. C. H. Par. 3001, Eastern District of Missouri; *In re Draco Realty Corporation,* C. C. H. Par. 3492, Southern District of N. Y.; and *In re 2168 Broadway Corporation,* C. C. H. Par. 3448, Southern District of N. Y., affirmed.

The question, being jurisdictional, is of utmost importance and of public concern. Many involuntary proceedings under Section 77B predicated entirely upon an allegation of a simple mortgage foreclosure receivership are pending in the Northern District of Illinois, and many such actions are pending in various circuits of the Federal Judiciary, as we are informed. The statute is new and has not been construed by this court upon the single point of law here presented. One Circuit Court of Appeals has rendered a decision in conflict with the decisions of another Circuit Court of Appeals on the same question. Each decided an important question in federal law which has not been but should be settled by this court.

Petitioners are submitting herewith a brief in support of this petition.

Wherefore, we respectfully submit that the Writ of Certiorari should be issued in this cause.

GEORGE T. BUCKINGHAM,
DON KENNETH JONES,
VINCENT O'BRIEN,
Counsel for Petitioners.